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8 Corporation and The Hershey Company

10 **UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN OF CALIFORNIA**

13 **HUHTAMAKI FINANCE, B.V.** a
14 Netherlands corporation; **THE**
15 **HERSHEY COMPANY**; **HERSHEY**
16 **CHOCOLATE &**
17 **CONFECTIONERY**
18 **CORPORATION**, a Delaware
19 corporation; and **THE HERSHEY**
20 **COMPANY**, a Delaware
21 corporation,

22 Plaintiffs,

23 vs.

24 **KENNETH DEAN AFFOLTER**, an
25 individual, d/b/a BEYOND BOMB,

26 Defendant.

27 CASE NO. C07-02514 RS

28 DECLARATION OF VITO A.
29 COSTANZO IN RESPONSE TO
30 ORDER TRANSFERRING CASE
31 WITH RECOMMENDATION OF
32 DISMISSAL

33 I, Vito A. Costanzo, declare as follows:

34 1. I am a member of Holland & Knight, LLP counsel for the Plaintiffs
35 herein. I have personal knowledge of the matters stated herein and could truthfully
36 testify thereto if called upon as a witness.

1 2. I received by e-mail today a message from the Court reflecting that an
2 order had been issued transferring the case with a recommendation of dismissal. I
3 accessed the Order Transferring Case With Recommendation of Dismissal and saw
4 that the Court had issued an order on December 12, 2007 scheduling an order to
5 show cause hearing on January 9, 2008. I was not previously aware of the Court's
6 December 12, 2007 order. Consequently, I did not appear at the hearing.

7 3. On December 12, 2007, my mother underwent surgery for a brain
8 tumor. I was at the hospital for the majority of the day. Today, I reviewed my e-
9 mails from that date and did find one from ECF-CAND@cand.uscourts.gov that
10 referenced the Court's December 12, order. Because of my focus on my mother's
11 brain surgery that day, I did not see this e-mail. I apologize to the Court for this.

12 4. I will file the Request for Default Judgment by Friday. I respectfully
13 request that the Court refrain from dismissing this case.

14 I declare under penalty of perjury and under the laws of the United States
15 that the foregoing is true and correct. Executed this 9th day of January 2008 at Los
16 Angeles, California.

Vito A. Costanzo

5045511 v1

1 PROOF OF SERVICE
2

3 State of California)
4 County of Los Angeles) ss.
5

6 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and
not a party to the within action. My business address is 633 W. 5th St., Suite 2100, Los Angeles,
California 90071.

7 On January 9, 2007, I served the document described as **DECLARATION OF VITO A.**
8 **COSTANZO IN RESPONSE TO ORDER TRANSFERRING CASE WITH**
9 **RECOMMENDATION OF DISMISSAL** on the interested parties in this action, enclosed in a
sealed envelope, addressed as follows:

10 Luke Zouvas, Esq.
11 Applbaum & Zouvas LLP
12 925 Hotel Circle
13 San Diego, CA 92108
14 Tel: (619) 688-1715
15 Fax: (619) 688-1716

16 **XXX By Mail** Following ordinary business practices, I placed the document for collection
and mailing at the offices of HOLLAND & KNIGHT, LLP 633 West Fifth Street, 21st Floor,
Los Angeles, California 90071, in a sealed envelope. I am readily familiar with the business'
practice for collection and processing of correspondence for mailing with the United States
Postal Service, and, in the ordinary course of business, such correspondence would be deposited
with the United States Postal Service on the day on which it is collected at the business.

17 **By Facsimile** I placed the document for transmittal by telecopier in the telecopy collection
18 box at Holland & Knight LLP. I am readily familiar with the business's practice for collection
and transmittal of documents via telecopier, and, in the ordinary course of business, such
19 documents would be telecopied on the day on which the document was placed for transmittal.

20 **XX (FEDERAL)**

21 I declare under penalty of perjury under the laws of the United States that
22 the above is true and correct and that I am employed in the office of a
member of the Bar of this Court at whose direction the service was made.

23 Executed on **January 9, 2007**, at Los Angeles, California.

24 
25 Conchita Nickles
26
27